



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : MAN/00CJ/LSC/2014/0131

**Property** : Grove Park, Gosforth, Newcastle upon Tyne  
NE3 1EG

**Applicants** : Various leaseholders (see Annex)

**Respondent** : Redlands Real Estates Limited

**Type of Application** : Landlord & Tenant Act 1985 – Section 27A  
Landlord & Tenant Act 1985 – Section 20C

**Tribunal Members** : Judge W L Brown  
Mr I D Jefferson MRICS

**Date of Decision** : 14 December 2015

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**DECISION**

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## **DECISION**

- (1) Redlands Real Estates Limited be substituted as Respondent in place of Broompark Management Limited.
- (2) Dr Russell Warhurst and Dr Kate Black be added as Applicants.
- (3) The rent or notional rent charged for the Room as part of the service charge for the Property is not reasonable or reasonably incurred.
- (4) Order made under Section 20C of the Act.
- (5) The legal costs of the Applicants are not recoverable against the Respondent but the Tribunal awards reimbursement by the Respondent of the application and hearing fees paid to the Tribunal for the Application.

### **Background**

1. By an application dated 1 December 2014 (the "Application") proceedings were commenced before the Tribunal to determine the reasonableness of service charges claimed by the Respondent in respect of the Property for service charges for 2012/13 and 2013/14 and the interim charge for 2014/15. Specifically, the Application concerns only the charges of the Respondent of a rent/notional rent of £5,200 p.a. for the use of a service room (the "Room") in part of the basement car park. The determination is made under Section 27A of the Landlord & Tenant Act 1985 (the "Act").
2. The Applicants further applied under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by them for a future year or years.
3. Directions were made by the Tribunal on 25 February 2015.
4. The Property comprises houses, two main blocks of modern flats ("South Block" and "North Block") and 6 smaller ones (the "Bookends"). There are 131 flats in the development. The two larger blocks, (collectively known as "Grove Park Oval"), were constructed on three raised storeys connected with a podium deck. On 27 October 2015 the Tribunal carried out an inspection of the Buildings comprising the Property, the interior of the car park, the Room and of the common areas of the South Block.
5. Present at the inspection for the Applicants were Peter Bowers, lay representative of Michael & Eileen Bowers; Stephen Robinson; Maureen Bennison and Ian Bremner. Attending for the Respondent were Mark Loveday, Counsel and Alex Tams from its Managing Agent, Kingston Property Services Limited.
6. The Property has a secure basement car park which sits beneath the two blocks and the podium deck. It has allocated parking spaces and a number of locked service rooms including the Room. The Tribunal found the Room to be

lockable, approximately 250 sq ft in size, with a concrete floor. A significant number of service pipes and electric cabling run through the Room. It is used as partly as a store and as a rest room for the full time day cleaner who undertakes some minor caretaking duties such as meeting contractors. There is a "Belfast" sink, toilet, shelving, electrical equipment, desk and chairs. The cctv monitor for the car park area is housed there.

7. The Tribunal observed that a number of other service rooms are located in the basement, including an electrical sub-station, water tanks and pumps for the Property and a small storage room in which are housed electrical distribution equipment and telephone switch-gear. Within the communal areas on each floor of the residential blocks are riser cupboards, utility meters for each flat and equipment for television and the door entry system.
8. A hearing took place on 27 October 2015 at SSCS, Manorview House Kings Manor Newcastle-upon-Tyne Tyne & Wear NE1 6PA. Attending for the Applicants were Peter Bowers, Judith Crowe and Judith Bremner and in addition, Dr. Russell Warhurst and Dr. Kate Blatch. Counsel and Mr Tams appeared for the Respondents.

### **Preliminary**

9. Under Rule 55 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal, with the agreement of the parties present, substituted Redlands Real Estates Limited as Respondent in place of Broompark Management Limited and added as Applicants Dr. Russell Warhurst and Dr. Kate Black.
10. The Application refers to relevant costs of £5,000pa incurred in 2012/13 and 2013/14 and a provision of £5,200 in the 2014/15 interim service charges. However, the parties agreed that actual figures are as appearing in the 2012/13 accounts of £10,400 for two years' "Caretaker's Room Rent" and in the 2013/14 accounts as a cost of £5,200. The interim service charges were estimated on the basis of a schedule entitled "Service charge estimate and the estimated relevant cost of £5,200pa for "Caretaker's Room Rent" was included for 2014/15. The invoices supporting these accounts are dated 1 December 2013, 30 March 2014 and 1 December 2014.

### **The Leases**

11. The Tribunal was informed that the leases of the flats are materially in similar form and was presented with the lease regarding the flat known initially as Plot 144, dated 3 October 2005 for a term of 199 years from 1 January 2003 at a defined variable ground rent (the "Lease"). The relevant provisions concerning service charges are:
  - (1) Clause 4.7 requires payment of an "Interim Charge" and a "Service Charge" without set-off.
  - (2) Clause 1.19 defines the "Interim Charge" by reference to "the Tenant's share of Total Expenditure". Clause 1.36 defines "Total Expenditure" as expenditure "in providing the Services". Clause 1.33 defines "the Services" by

reference to the landlord's relevant costs in providing the services in Sch.6 to the Lease.

(3) Clause 1.32 defines the "Service Charge" by reference to the "Estate Service Charge" and the "Apartment Service Charge". Clause 1.12 defines the "Estate Service Charge" by reference to the costs of providing the "Estate Services". Clause 1.13 defines the "Estate Services" by reference to the services in Part 1 of Schedule 6 to the Lease. Clause 1.4 defines the "Apartment Service Charge" by reference to the costs of "the Apartment Services" which is defined in clause 1.5 by reference to services identified in Part.2 to Schedule 6 to the Lease.

12. Specifically referred to by the Respondent are the following extracts:

Sch6. Proviso (a)

*"(a) The Landlord may at any time add to the heads of expenditure any depreciation or other allowance provision for future anticipated expenditure on or replacement of any installation equipment plant or apparatus or rental value of any part of the Estate in connection with the provision of the services thereto not previously included therein..."*

Sch.6, Pt.1 para 14 the "relevant costs" include:

*"14 Paying insurance costs the costs of renewal repair maintenance renewal and decoration rates telephone charges gas electricity charges council tax and similar charges and taxes and other outgoings and incidental expense of:*

*14.1 Any accommodation provided in the Building or elsewhere for occupation or use by the persons employed in connection with the provisions of the services to the Managed Estate with the exception of the Apartment Blocks and*

*14.2 Any accommodation provided for vehicles parts equipment and other things employed in connection with the provision of the Services to the managed Estate with the exception of the Apartment Blocks".*

Sch.6, Pt2 para 18, "Apartment Services" include:

*"18. Paying insurance costs the costs of renewal repair maintenance renewal and decoration rates telephone charges gas electricity charges council tax and similar charges and taxes and other outgoings and incidental expenses of:*

*18.1 Any accommodation provided in the Building or elsewhere for occupation or use by the persons employed in connection with the provisions of the services to the Apartment Blocks.*

*18.2 Any accommodation provided for vehicles parts equipment and other things employed in connection with the provision of the Services to the Apartment Blocks".*

Sch.6,Pt 1 para 13 provides that the Respondent may employ and train staff for the “Managed Estate” either:

*“directly or indirectly for the performance of their duties” and to incur “all other incidental expenditure in relation to such employment including ...in respect of such staff and uniforms working clothes tools office equipment stationery and such consumables machinery ...and other equipment and materials for the proper performance of their duties”.*

13. The Tribunal also specifically considered Sch.6, Pt2 para 17, which states that Apartment Services” include :

*“Employing and training staff for the Apartment Blocks either directly or indirectly for the performance of duties in connection with the maintenance and/or security of the Apartment Blocks such duties to be determined by the Landlord from time to time and all other incidental expenditure in relation to such employment including (but without limiting the generality of such provision) contributions to an occupational pension scheme the payment of such insurance health pension welfare and other contributions to and premiums.....and otherwise to pay or may in his absolute discretion deem desirable and necessary in respect of such staff and uniforms working clothes tools office equipment stationery and such office consumables machinery bins receptacles and other equipment and materials for the proper performance of their duties.”*

Also relevant is the definition of “Common Parts at 1.10:

*“...all those parts of the Estate available for the common use of two or more tenants at the Estate or members of the public including but without prejudice to the generality of the foregoing access roads walkways gates gardens landscaped areas main entrances corridors landings lifts passenger lift telephones staircases the Bin Store (if any) bicycle store (if any) visors car parking spaces (if any) security videos video door entrance system fire alarm system communal television aerial (if any) cable television (if any) communal water supply communal lighting and all other areas and facilities provided by the Landlord for the common use of tenants of the estate and their visitors but excluding (for the avoidance of doubt) any areas to which any tenant or group of tenants has been granted exclusive rights.”*

## **The Law**

14. Section 19 of the Act states

Limitation of service charges: reasonableness

*(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*

- a. only to the extent that they are reasonably incurred, and*
- b. where they are incurred on the provision of services or the carrying out of works, only for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.*

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

15. Section 27A of the Act states

Liability to pay service charges: jurisdiction

*(1) An application may be made to the appropriate tribunal for a determination whether service charge is payable and, if it is, as to*

- a. the person by whom it is payable,*
- b. the person to whom it is payable,*
- c. the amount which is payable*
- d. the date at or by which it is payable, and*
- e. the manner in which it is payable.*

*(2) Subsection (1) applies whether or not any payment has been made.*

*(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -*

- a. the person by whom it would be payable,*
- b. the person to whom it would be payable,*
- c. the amount which would be payable,*
- d. the date at or by which it would be payable, and*
- e. the manner in which it would be payable.*

## **The Issues**

16. Counsel for the Respondent identified three questions from the Applicants' Statements of Case and the Applicants at the hearing confirmed that these were the principle issues for the Tribunal in making its determination. Those questions were:

(1) Do the leases permit the Respondent to include a rent/notional rent for the Room in the relevant costs?

(2) If so, was the rent "reasonably incurred" under s.19(1) of the Act – or in the case of the 2014/15 interim charge, is that element of the interim service charge relating to the estimated £5,200 pa notional rent "a greater amount than is reasonable" under s.19(2)).

(3) Section 20C costs/Reimbursements of fees.

## **The Evidence**

17. Peter Bowers lead the representations and presented to the Tribunal a Statement and Supplementary Statement of Case dated 16 March and 5 July 2015 respectively. The Respondent provided a Statement of Case from Scott Cohen Solicitors dated 1 April 2015 and its Counsel presented a document of "Opening Submissions", but which largely set out the Respondent's case and a bundle of case law authorities. Both parties gave closing submissions orally.

## **The Applicants' Case**

18. A caretaker had been employed in connection with the provision of services to Grove Park in 2010 and in 2013 the Respondent unilaterally imposed an annual charge in relation to the Room which is used mainly by the caretaker but also by cleaners and maintenance contractors.
19. The Applicant accepted that it is reasonable for the Respondent to charge for costs relating to use of the Room in accordance with the Lease, but only in respect of: (1) insurance costs (2) costs of renewal repair and maintenance (3) decoration (4) rates (5) telephone charges (6) gas, electricity and water (7) Council Tax (8) other outgoings and incidental expenses. There is no telephone or gas supply available to the Room as far as the Applicant is aware. The Applicant understands that items (1) through (8) (as applicable) have always been paid though the maintenance charge for communal areas, which suggests that the Respondent is charging twice and therefore is seeking to profit from the charge for the Room, which is not permitted by the Lease.
20. The charge of £5,000 pa is arbitrary and excessive. No detail has been offered as to the exact charges incurred for the use of this room. The charge equates to £416 per month for an area which is understood to be a size of 240 square feet. This equates to a rate of £21 per square foot. However, the area is simply a storage room that is used by the caretaker on an occasional basis, but mainly as a store for cleaning materials and other sundry items.
21. On the question of reasonableness of the charge, the Tribunal was provided with information of rents being asked for properties in Gosforth of approximately similar dimensions as the Room, in the region of £4,650 pa for commercial use to £8,100 pa for residential space. However, their representation was that nothing should be recoverable in respect of the Room.

## **The Respondent's Case**

22. The Respondent first addressed whether the rent/notional rent charged for the use of the Room, being part of the Respondent's premises, was recoverable under the terms of the Lease. It submitted that the Tribunal should not apply any special rules of construction in relation to a service charge issue and should not construe provisions restrictively (relying upon *Arnold v Britten* [2015] UKSC 36).
23. It stated that the Lease permitted recovery of a notional rent, relying on Schedule 6, proviso (a) and inclusion of the words "rental value". It said that the

Room forms “part of the Estate” and the rent is “in connection within the provision of services” to the Estate. Therefore the rent can properly be charged.

24. The Tribunal was referred to *Lloyds Bank v Bowker Orford* [1992] 2 EGLR 44 and the judgment of Neuberger QC in which the Judge gave a wide meaning to the word “costs”. The Respondent relied upon the non-exhaustive definitions of recoverable relevant costs for “Estate Services” in Schedule 6 Pt.1 para 14 and costs associated with “Apartment Services” set out in Pt.2 para 18 (see extracts at paragraph 12).
25. With reference to Sch.6, Pt.1. para 13 it submitted that the rent for accommodating staff is “*incidental expenditure in relation to such employment*”. It supported that point referring to *Agavil Investments v Corner* (unreported, 3 October 1975, Court of Appeal) in which a notional rent was permitted for providing such a facility.
26. It said that if on-site accommodation was not provided, a charge would be permissible for a third party (such a cleaning contractor) “indirectly” to provide off-site accommodation for its staff. Here the Respondent is providing staff “directly”, and it would be wrong for the Respondent to be put in a worse position if it decided to house staff on-site.
27. The Tribunal was directed to *Gilje v Charlgrove Securities* [2001] EWCA Civ 1777, in which the Court of Appeal distinguished the *Agavil* and *Bowker-Orford* cases in finding that the lease in that case limited the lessor to recovering “*moneys expended*”. The Respondent submitted that the Lease did not contain such restricted wording.
28. On the question of reasonableness of the charge, the Respondent provided information of office space in the vicinity of the Property at an asking rent of £5,200 pa for 193 sq ft. It submitted that s.19(1) of the Act means that for relevant costs to be “reasonably incurred” it is not necessary for the cost to be the cheapest price for which the services could have been obtained, but simply that the relevant costs must fall within the range of reasonable prices for such services
29. Regarding the interim charge for 2014/15, the element of £5,200 for estimated rent is to be dealt with under s.19(2) of the Act. It submitted that the test is whether that element of the service charge derived from the estimated rent is “a greater amount than is reasonable in amount”. It submitted it was perfectly reasonable there to be provision for £5,200 pa based on the previous years’ rent.

#### **THE TRIBUNAL’S FINDINGS AND DECISION ON THE SECTION 27A APPLICATION**

30. The Tribunal first dealt with the preliminary issues referred to in paragraph 9.
31. The Tribunal was satisfied that the Application concerned the figures referred to in paragraph 10.
32. The Tribunal found that the rent charged for the Room was not an actual direct cost incurred by the Respondent. The Room is used principally for storage, to



house the cctv monitor for the basement car park and as a rest room for the full-time cleaner who works during day times. From the evidence it was apparent that the Room has been in situ since construction of the Blocks and podium deck. It had a w/c installed at some later time but in common with the other service rooms in the basement it is largely as it was at construction. The Tribunal noted that although such use has been taking place for some time prior to the accounts of 1 December 2013 it was only at that date that the charge was first levied on the Applicants by an invoice of that date.

33. The Tribunal noted that it must direct itself firstly under Section 19(1) as to whether the rent attributed to the Room claimed to be recoverable for service charge years' accounts for 2012/13 and 2013/14 was a reasonably incurred charge. Secondly, regarding the interim service charge for 2014 /15, whether the similar charge is a greater amount than is reasonable.
34. To make its determination the Tribunal sought to interpret the Lease in a non-restrictive way and to give the words in it their natural meaning to identify if it permitted the Respondent to charge a rent or a notional rent for the Room. The Respondent argued (as set out in paragraphs 22 – 25) that as a matter of construction the charge was permitted.
35. The Tribunal carefully considered the case law to which Counsel for the Respondent referred as supporting his argument, namely *Lloyds Bank v Bowker Orford* [1992] 2 EGLR 44; *Agavil Investments v Corner* (unreported, 3 October 1975, Court of Appeal); *Carey-Morgan v Howard de Walden* [2013]UKUT 0134 (LC); *Arnold v Britten* [2015]UKSC 36 and *Conway & Others v Jam Factory Freehold* [2013] UKUT 0592. The Tribunal accepted that in principle a lessor may charge a rent or a notional rent for use of parts of its premises, if the wording of the lease permits. However, as in *Gilje v Charlgrove Securities* [2001] EWCA Civ 1777, to which the Tribunal also was referred by Counsel for the Respondent, the Tribunal determined that the wording in the Lease here is insufficiently broad to allow for such a charge.
36. The issue is whether any rent / notional rent can be said to be referable to the cost of providing the services as described in Schedule 6 of the Lease. The Tribunal found that it does not. The Tribunal considered that the provisions in Schedule 6 Part 1 and Part 2 at clauses 14.1 and 18.1 should not be given the wide interpretation of “costs and “other outgoings” as submitted by the Respondent (see paragraphs 23-25). Such a construction does not emerge clearly from the words used.
37. It was not argued directly by the Respondent, but was considered by the Tribunal, whether in the absence of clear contractual provision permitting the charge the Respondent is entitled to recover for the possibility of charging some rent to a third party for the Room which has been foregone. The Tribunal was unable to find an enabling provision in the Lease.
38. Both parties put forward various comparable evidence of asking rents for both commercial and residential premises, for different reasons. The commercial lettings evidence was to show what rents could be achieved, but it was in respect

of above-ground, generally office premises, which could be let on the open market. The residential lettings evidence was simply to show what rent could be requested for a flat with living space and a bedroom. The information provided to the Tribunal was of asking rents. None of this evidence had any real comparable status with the Room, which is in a secure basement car park, windowless and is really only suitable for its current use. The comparable rental evidence presented to the Tribunal was for premises dissimilar to the Room. The Tribunal found that access to the Room for a third party would be very difficult to achieve without prejudicing the security of the car park and the buildings above to which there is walking access.

39. The Tribunal found that the Room is and was always intended to be, part of the Common Parts as defined in the Lease at clause 1.10. Therefore it was not capable of being rentalised in the same way that a lift or staircase could not be let.
40. The Tribunal went on to consider that should its interpretation of the Lease be incorrect what would an appropriate notional rent be? Having regard to the physical characteristics of the Room, its location in a secure basement car park and the fact that it has been part of the main building from its construction, the Tribunal using its expertise determined that the market rental value of the Room is only a nominal £1 per annum.
41. Therefore the Tribunal determined that the charges referred to in paragraph 10, being a rent or notional rent in respect of the Room, for the years at issue are not reasonable or reasonably incurred.

#### **As to Section 20C**

42. There was an application before the Tribunal under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by them for a future year or years. The Tribunal has found that the charges within the Application are not reasonable in accordance with Section 19 of the Act. Therefore it considers that it is appropriate to make an order under Section 20C.
43. The Applicants sought to recover their reasonably minor legal costs incurred before the hearing and the fees paid to the Tribunal. The Respondent had been entitled to argue its interpretation of the Lease. Therefore the Tribunal determined that the legal costs were not recoverable against the Respondent but as the Applicants have been successful the Tribunal awards reimbursement by the Respondent of the application and hearing fees paid to the Tribunal for the Application.

## **ANNEX**

### **Leaseholder**

Francesca Kelly  
Lynn Milburn  
Stephen Robinson  
Michael & Eileen Bowers  
Cynthia Turner  
Joan Crowe  
Maureen Bennison  
Lesley Bessant  
Ian & Judith Bremner  
Dr Russell Warhurst  
Dr Kate Black

### **Address**

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19 Grove Park Oval  
21 Grove Park Oval  
25 & 73 Grove Park Oval  
29 Grove Park Oval  
30 Grove Park Oval  
44 Grove Park Oval  
95 Grove Park Oval  
39 Grove Park Crescent  
68 Grove Park Crescent  
41 Grove Park Crescent